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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,902	06/07/2005	Gerard Lefevre	11016-0038	7186
22902	7590	05/24/2006	EXAMINER	
CLARK & BRODY 1090 VERMONT AVENUE, NW SUITE 250 WASHINGTON, DC 20005			KRAMER, DEAN J	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 05/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/537,902	LEFEVRE, GERARD	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dean J. Kramer	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 5-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/7/05</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6-14 are confusing in that they ultimately depend from cancelled claim 1.

The phrases "that is in closed" (claim 8, line 3) and "are realized" (claim 14, lines 1 and 2) are not clearly understood.

There is no clear antecedent basis for "its elements" as recited in claim 14.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 5, 6, and 10, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Hennessy et al. (4,225,174).

The patent to Hennessy et al. shows a dog excrement collector comprising a hollow shaft (14), a handle (16), a generally rectangular frame (22), a first rod (20), a second rod (74), a pull element (18), and a sack (B) at least indirectly attached to the

frame and the second rod to move between an open (Fig. 2) and closed (Fig. 3) position. Regarding claim 10, a "conventional twist tie" is provided for closing the sack (see col. 6, lines 65-68).

5. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Orofino (4,097,082).

Orofino shows a waste collector comprising a hollow shaft (20), a handle (24), a rectangular frame assembly (12,14,16), a first rod (22), a second rod (140), a pull element (23), and a sack (250) attached between a portion of the frame (14) and adjacent the second rod (see Fig. 7).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 9 and 14, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hennessy et al. in view of Searing (5,403,050).

Searing shows a waste collecting device having a supply of disposable, biodegradable containers (38) having spaced apart holes (54) for receiving corresponding portions of frame (16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the sacks (B) used in the Hennessy et al. device with holes for engaging corresponding tabs or hooks on the frame (22) as taught by Searing in

order to remain secured to the frame during the collection of waste. It also would have been obvious to use a biodegradable bag as suggested by Searing so that the bag along with the waste material could decompose once discarded.

8. Claims 11 and 12, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hennessy et al. in view of Cooper (4,819,977).

Cooper shows a dog excrement collector comprising a hollow handle portion (6) that can store extra bags (see col. 3, lines 12-14). Further, Cooper shows a lanyard (8) that could inherently function as a "fixing means" to attach a leash or the like thereto.

It would have been obvious to a person having ordinary skill in the art to provide a hollow end portion on the Hennessy et al. device for storing extra bags as taught by Cooper so that a user could have a ready supply of bags at his disposal. Also, it would have been obvious to provide the Hennessy et al. collector with a lanyard similar to that shown in the Cooper patent for facilitating the carrying of the device. This lanyard would inherently be capable of "fixing" or attaching certain leashes thereto.

#### ***Allowable Subject Matter***

9. Claims 7, 8, and 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Specification***

10. The disclosure is objected to because of the following informalities:

On page 1, line 17, it appears that the word "ands" should be changed to —ends—.

Appropriate correction is required.

### ***Drawings***

11. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "plastic tie", as recited in claim 10, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.


### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Garza et al. and D'Ath show slidable rod members for opening and closing containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dean J. Kramer whose telephone number is (571) 272-6926. The examiner can normally be reached on Mon., Tues., Thurs., Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 5/16/06  
Dean J Kramer  
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Art Unit 3652

djk  
5/16/06